

Chapter 2
FREE APPROPRIATE PUBLIC EDUCATION

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Chapter 2

Free Appropriate Public Education

The local education agency (district) is required to ensure that a free appropriate public education (FAPE) is available to students in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the Disabilities Education Improvement Act of 2004 (IDEA 2004) means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

Section 2. Provision of FAPE

A. District Obligation

The district is required to ensure that FAPE is available to students in the district who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs. If a student is placed in a district by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined upon Idaho Code regarding the specific situation.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district shall provide FAPE to an individual who is at least 3 years old and who qualifies for special education services unless the parent and/or adult student has refused special education services.
2. The district shall offer FAPE to parentally placed private students in accordance to statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.
3. A free appropriate education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.

Note: Participation in Early Intervening Services neither limits nor creates a right to FAPE.

B. Limit to District Obligation

1. The district is not obligated to provide some or all special education and related services, if it has been offered, but a parent elected to place the student in a private school or facility. However the district shall include that student in the population whose needs are addressed consistent with Child Find requirements. See Chapter 9 for more information.
2. Students who are home schooled and dually enrolled are considered private school students for the purposes of dual enrollment. The same procedures would be available to these students as parentally placed private school students who are dually enrolled.

C. When District Obligation to Provide FAPE Ends

1. the semester in which the student turns 21 years old; or
2. when the student meets the district requirements that apply to all students for receipt of a regular high school diploma; a regular high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a certificate or a general educational development credential (GED).
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation.

D. Temporary Suspension of FAPE

The district is not required to provide FAPE to an eligible student during the suspension of 10 cumulative school days or less during a school year; however, FAPE must be provided following this 10-day exception.

Section 3. FAPE Considerations

A. Case Law Interpretations of FAPE

The courts have further defined the term FAPE as a result of lawsuits between parents and districts. In 1982, the United States Supreme Court ruled in the case of *Hendrix Hudson Central School District Board of Education v. Rowley*. This landmark case set a standard for FAPE that is commonly referred to as the *Rowley Standard*. The *Rowley* decision defines FAPE as including these two components:

1. an IEP developed in adequate compliance with the IDEA 2004 procedures; and
2. an IEP reasonably calculated to enable the student to receive educational benefit.

The *Rowley* decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade.

B. Applicability to Charter and Alternative Schools

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA 2004.

C. Applicability to Detained Youth

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC)

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

4. Services to Youth in the Custody of the Department of Correction (DOC)

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction through an agreement between the SDE and the Department of Correction.

D. Using Public and Private Insurance Funds to Provide FAPE

If a student is covered by a parent's private or public insurance or benefits, the district may access this insurance only if the parent provides informed consent. Each time the district proposes to access the private insurance, the district shall obtain written parental consent and inform the parent that his or her refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parent.